Remarks

Reconsideration of this Application is respectfully requested.

Upon entry of the foregoing amendment, claims 1-7, 10, 11, and 14-16 are pending in the application, with claims 1, 4, and 7 being the independent claims. Claims 1, 4, and 7 are sought to be amended. These changes are believed to introduce no new matter, and their entry is respectfully requested.

Based on the above amendment and the following remarks, Applicants respectfully request that the Examiner reconsider all outstanding objections and rejections and that they be withdrawn.

Statement of Substance of Interview

Pursuant to 37 C.F.R. § 1.133, Applicants provide the following statement of substance of the interview. Applicants expresses their appreciation to Examiner Curtis Alia for the courtesy of a telephonic interview with Applicants' representative Kavon Nasabzadeh on February 18, 2010. During the interview, Applicants' representative and the Examiner discussed clarifying amendments to claim 1, 4, and 7 to further distinguish over the art of record.

An agreement was reached. In particular, Applicants' representative agreed to amend independent claim 1 to recite "wherein the first bit rate is determined by an algebraic equation of a combination of definite values that include the second bit rate, the pre-determined maximum allowed transmission latency, a discrete multi-tone symbol duration, a number S_1 of symbols of the first noise phase transmitted during a number C of noise clock cycles, and a number S_2 of symbols of the second noise phase transmitted

during the number C of noise clock cycles" to overcome the references of record. Applicants' representative further agreed to amend independent claims 4 and 7 to recite similar distinguishing features to overcome the references of record.

Provisional Non-Statutory Double Patenting Rejection

Claims 1, 2, 4, 5, 7, and 10 stand rejected under the judicially created doctrine of obviousness-type double patenting for allegedly being unpatentable over claims 8 and 26 of co-pending Application No. 10/880,769. Claims 3, 6, and 11 stand rejected under the judicially created doctrine of obviousness-type double patenting for allegedly being unpatentable over claims 8, 26, and 35 of co-pending Application No. 10/880,769 in view of U.S. Patent No. 6,009,122 to Chow.

Without acquiescing to the propriety of the rejection, Applicants submit herewith a terminal disclaimer in compliance with 37 C.F.R § 3.73(b) to overcome the double patenting rejection with respect to the claims presented above. Accordingly, Applicants respectfully request that the rejection of claims 1-7, 10 and 11 under the judicially created doctrine of obviousness-type double patenting be reconsidered and withdrawn.

Rejections under 35 U.S.C. § 102

Claims 1 and 4 were rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by U.S. Patent No. 6,747,992 to Matsumoto ("Matsumoto"). For the reasons set forth below, Applicants respectfully traverse.

Without acquiescing to the propriety of the rejection, Applicants have amended claims 1 and 4 solely to expedite prosecution. In particular, independent claims 1 and 4

have been amended to recite "wherein the first bit rate is determined by an algebraic equation of a combination of definite values that include the second bit rate, the pre-determined maximum allowed transmission latency, a discrete multi-tone symbol duration, a number S_1 of symbols of the first noise phase transmitted during a number C of noise clock cycles, and a number S_2 of symbols of the second noise phase transmitted during the number C of noise clock cycles" As agreed during the telephonic interview between Applicants' representative and the Examiner, Matsumoto does not teach or suggest at least this feature.

Because Matsumoto does not teach or suggest each and every feature of independent claims 1 and 4, it cannot anticipate those claim. Accordingly, Applicants respectfully request that the rejection of claims 1 and 4 under 35 U.S.C. § 102(b) be reconsidered and withdrawn.

Rejections under 35 U.S.C. § 103

Claims 2, 3, 5, and 6

Claims 2, 3, 5, and 6, were rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Matsumoto in view of U.S. Patent No. 6,801,570 to Yong ("Yong"). For the reasons set forth below, Applicants respectfully traverse.

Without acquiescing to the propriety of the asserted combination, Yong does not cure the deficiencies of Matsumoto with respect to independent claims 1 and 4 as noted above. Consequently, independent claims 1 and 4 are patentable over the combination of Matsumoto and Yong. Claims 2, 3, 5, and 6 are similarly patentable over the combination of Matsumoto and Yong for at least the same reasons as independent claims

1 and 4, from which the respectively depend, and further in view of their own features. Accordingly, Applicants respectfully request that the rejection of claims 2, 3, 5, and 6 be reconsidered and withdrawn.

Claim 7

Claims 7 was rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Matsumoto in view of U.S. Patent No. 6,804,267 to Long et al. ("Long") and in view of U.S. Patent No. 6,804,267 to Okamura ("Okamura"). For the reasons set forth below, Applicants respectfully traverse.

Without acquiescing to the propriety of the rejection, Applicants have amended claim 7 solely to expedite prosecution. In particular, independent claim 7 has been amended to recite "wherein the first bit rate is determined by an algebraic equation of a combination of definite values that include the second bit rate, the pre-determined maximum allowed transmission latency, a discrete multi-tone symbol duration, a number S_1 of symbols of the first noise phase transmitted during a number C of noise clock cycles, and a number S_2 of symbols of the second noise phase transmitted during the number C of noise clock cycles." As noted above, in regard to claims 1 and 4, Matsumoto does not teach or suggest at least this feature. Long and Okamura do not cure the deficiency of Matsumoto. Consequently, independent claim 7 is patentable over the combination of Matsumoto, Long, and Okamura. Accordingly, Applicants respectfully request that the rejection of claim 7 be reconsidered and withdrawn.

Claims 10 and 11

Claims 10 and 11, were rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Matsumoto in view of Long, Okamura, and Yong. For the reasons set forth below, Applicants respectfully traverse.

Without acquiescing to the propriety of the asserted combination, Yong does not cure the deficiencies of Matsumoto, Long, and Okamura with respect to independent claim 7 as noted above. Consequently, independent claim 7 is patentable over the combination of Matsumoto, Long, Okamura, and Yong. Claims 10 and 11 are similarly patentable over the combination of Matsumoto, Long, Okamura, and Yong for at least the same reasons as independent claim 7, from which the depend, and further in view of their own respective features. Accordingly, Applicants respectfully request that the rejection of claims 10 and 11 be reconsidered and withdrawn.

Allowable Subject Matter

Claims 14-16 have been objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all limitations of the base claim and any intervening claims. Based on the above Remarks, Applicants submits that claims 14-16 are patentable over the art of record without being rewritten in independent form including all limitations of the base claims and any intervening claims. Therefore, it is respectfully requested that the objection to claims 14-16 be reconsidered and withdrawn.

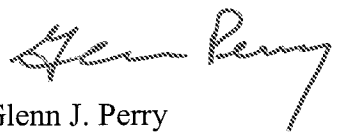
Conclusion

All of the stated grounds of objection and rejection have been properly traversed, accommodated, or rendered moot. Applicants therefore respectfully request that the Examiner reconsider all presently outstanding objections and rejections and that they be withdrawn. Applicants believe that a full and complete reply has been made to the outstanding Office Action and, as such, the present application is in condition for allowance. If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided.

Prompt and favorable consideration of this Amendment and Reply is respectfully requested.

Respectfully submitted,

STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C.



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